No. 95-1100

In The

Supreme Court of the United States

October Term, 1995

THE BOARD OF THE COUNTY COMMISSIONERS OF BRYAN COUNTY, OKLAHOMA,

Petitioner,

vs.

JILL BROWN,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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35 pp

QUESTIONS PRESENTED

1. Whether complying with a minimum state law requirement for hiring police officers insulates a municipality from § 1983 liability, even though a jury has reasonably decided that a municipal policymaker's particular hiring decision was so inadequate as to amount to deliberate indifference to the constitutional rights of citizens?

2. Whether the jury's conclusion that Bryan County was deliberately indifferent is supported by the facts?

3. Whether, as a matter of law, to establish municipal liability under § 1983, a plaintiff must establish at least two constitutional torts (*i.e.*, two instances of excessive force by a police officer), or two deliberately indifferent hiring decisions by a municipal policymaker, before she can recover for the particular constitutional deprivation she suffered at the hands of a police officer?

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Respondent, Jill Brown, respectfully urges the Court to deny Bryan County's Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE CASE

This case involves a straightforward application of this Court's § 1983 municipal liability requirements to a County's decision to hire, as a reserve police officer, an individual with a lengthy criminal record showing not only a propensity toward violence, but a callous disregard for the law. The County then put him on the street, provided him with no formal training, and authorized him to make forcible arrests. Not long after being vested with such authority, the officer employed excessive force during an unlawful arrest of Jill Brown, unnecessarily slamming her to the pavement, resulting in severe injuries to her knees which, despite a series of operations, will eventually require total knee replacements. The Fifth Circuit ruled that the evidence supported the jury's verdict finding all elements of § 1983 municipal liability established. *Brown v. Bryan County*, 67 F.3d 1174, 1187 (5th Cir. 1995). Nothing in its opinion remotely raises an issue worthy of certiorari.

In its Petition, Bryan County consistently understates the volume of evidence showing that it acted with deliberate indifference when its undisputed official policymaker on matters of hiring police officers, Sheriff B.J. Moore, decided to employ his nephew, Stacy Burns, to be a reserve officer. At the time Bryan County hired him to be a law enforcement officer, Burns had a lengthy criminal record of arrests and convictions: Assault, Public Drunkenness, Driving While Intoxicated, False Identification, Driving While License Suspended, Resisting Arrest, and nine moving traffic violations. R. Vol. 7, pp. 317-321; R. Vol. 9, pp. 573-577. Sheriff Moore was aware of Burns' lengthy criminal history. R. Vol. 7, pp. 323-324; R. Vol. 9, pp.

648, 672-673. Nevertheless, when Sheriff Moore acquired Burns' rap sheet, he did not read it carefully. R. Vol. 9, pp. 672-673. Moore admitted on cross-examination that he did not notice the assault conviction, did not notice the resisting arrest, did not notice the public drunkenness, and did not notice the false identification. R. Vol. 9, p. 673. While being pressed about his alleged failure to notice these crimes, Moore excused his inattention with the explanation: "He had a long record." R. Vol. 9, p. 673. Sheriff Moore admittedly made no further inquiry into the disposition of any of the charges or convictions, R. Vol. 9, pp. 673-675, and made no attempt to determine whether Burns was currently on probation. R. Vol. 9, p. 674. If he had, he would have discovered that there was an outstanding warrant for Burns' arrest for violating conditions of probation. R. Vol. 7, pp. 319-320, R. Vol. 9, pp. 621-622. Burns not only failed to pay fines and failed to perform community service, he also violated his probation by continuing to commit crimes including the assault, the public drunkenness, the driving while license suspended, and the false identification. R. Vol. 7, pp. 319-320. Despite Sheriff Moore's awareness that Burns had a long criminal record, despite the absence of a background investigation which would have shed additional light on Burns' character, and despite Moore's knowledge that Burns would be making forcible arrests prior to receiving any meaningful training, Moore made the decision to hire Burns, and did so pursuant to his status as the decision-maker for Bryan County. R. Vol. 9, p. 672.

Stacy Burns testified that, prior to beginning work as a reserve officer, he had no experience as a patrol officer. R. Vol. 9, p. 602. Despite that lack of experience, and his criminal history, Bryan County Sheriff's Department provided no formal departmental training to Burns. R. Vol. 9, p. 601. He received no training regarding roadblock procedures, R. Vol. 9, pp. 602, 605, 679-680, no training regarding pursuit across state lines, R. Vol. 9, p. 602, and no training regarding his authority to arrest in

Texas. R. Vol. 9, p. 603. He received no supervision during the incident involving Jill Brown, R. Vol. 9, pp. 603-604, and no instructions during the pursuit. R. Vol. 9, p. 609. Despite this absence of training and experience, Sheriff Moore authorized Burns to make forcible arrests. R. Vol. 9, p. 604. It was just his thirteenth arrest that led to the instant lawsuit. Although both sides introduced conflicting evidence regarding the events immediately preceding and during the traffic stop in which Jill Brown was severely injured, the Fifth Circuit ruled that there was plenty of evidentiary support for the jury's decision to believe the plaintiff's version of the events. 67 F.3d 1174, 1178-81. And Bryan County no longer disputes the jury's determination that Officer Burns deprived Jill Brown of her constitutional rights by subjecting her to excessive force, false arrest, and false imprisonment.[1] Instead, Bryan County is

1. Specifically, Jill Brown testified that she heard two commands to get out of the vehicle, was doing exactly what Burns told her to do, and was not slow to respond. R. Vol. 5, pp. 53-54, 94. After starting to exit the vehicle with her hands in the air, Burns grabbed her by the left arm, spun her around, and threw her to the ground. R. Vol. 5, pp. 52-53. She was not able to break her fall as one hand was in the air and Burns had hold of the other. R. Vol. 5, p. 53. Ms. Brown landed on the pavement, knees first, with Burns' knees in her back. R. Vol. 5, p. 54. She testified that, prior to being thrown to the ground, she was not slow to respond to any commands, did not reach for anything, or do anything that would lead Burns to believe she was reaching for anything. R. Vol. 5, pp. 54-55. (Given Burns' lengthy criminal record, which revealed a disturbing disregard for the law, it is hardly surprising that the jury rejected his version of the events.) As a result of Stacy Burns' actions, Jill Brown has needed four operations, two on each knee, and will require additional surgery. R. Vol. 7, pp. 261, 268.

Moreover, the Fifth Circuit found sufficient evidence to support the jury's additional finding of false arrest and false imprisonment. 67 F.3d at 1180-81. Jill Brown had committed no crime, yet, after being slammed to the pavement, she remained handcuffed there for approximately one hour, during which time she was never informed of the nature of the charges for which she was being detained. *Id.* And no charges were ever brought against her. *Id.* at 1181.

contesting only the County's liability for its employee's constitutional tort.

At trial, Jill Brown established the three elements necessary to demonstrate that Bryan County was sufficiently at fault for its employee's constitutional tort to justify the imposition of § 1983 *municipal* liability: (1) a municipal "policy," pursued with (2) deliberate indifference, which (3) proximately caused the constitutional deprivation. First, Bryan County conceded that Sheriff Moore was the County's official policymaker with exclusive and final policymaking authority regarding the hiring and training of county law enforcement officers including Reserve Officer Burns. R. Vol. 3, pp. 854, 862. Second, the jury's verdict expressly found that the County, through its policymaker on matters of hiring and training, was deliberately indifferent to Jill Brown's constitutional rights, both with respect to the improper hiring and inadequate training of Burns. R. Vol. 10, pp. 823-25. Third, the jury found that Jill Brown's injuries (from the excessive force) were proximately caused by the deliberate indifference of Bryan County's official policymaker.[2] *Id.*

The Fifth Circuit affirmed the jury's verdict of municipal liability, finding that the jury's verdict was supported by the evidence. *Brown v. Bryan County*, 67 F.3d 1174, 1185 (5th Cir. 1995). The Fifth Circuit's affirmance was properly deferential to the jury's resolution of conflicting evidence, and its analysis

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2. The District Court's charge to the jury on municipal liability, at R. Vol. 10, pp. 799-801, mirrored Judge Higginbotham's three-part statement of the law in *Benavides v. Wilson County*, 955 F.2d 968, 972 (5th Cir. 1991) ("In order to prove that a municipal hiring or training policy violated his rights under § 1983, Benavides must show that (1) the training or hiring procedures of the municipality's policymaker were inadequate; (2) the municipality's policymaker was deliberately indifferent in adopting the hiring or training policy; and (3) the inadequate hiring or training policy directly caused the plaintiff's injury.") (*citing City of Canton v. Harris*).

was, accordingly, very fact-intensive. *Id.* at 1178-85. The Fifth Circuit never ruled — in any way — that hiring officers with a misdemeanor record constitutes deliberate indifference as a matter of law; the Fifth Circuit never held that state governmental subdivisions are precluded from hiring any individual with an extensive misdemeanor record; and the Fifth Circuit never created absolute federal minimums for a state's employment of law enforcement officers. *See id.* A fair reading of the Fifth Circuit's opinion reveals that it held only that, based on the particularly egregious evidence presented in this case, the jury could reasonably find that Bryan County's policymaker acted with deliberate indifference when hiring Burns, *id.* at 1183-85, and that such deliberate indifference directly caused the constitutional deprivations (excessive force, unlawful arrest) suffered by Jill Brown. *Id.* at 1185. Thus, Bryan County's Petition not only understates the sheer volume of evidence of municipal fault in this case, but mischaracterizes the Fifth Circuit's opinion as well.

Judge Emilio Garza filed a confusing dissent that simply misunderstands this Court's precedents regarding municipal liability under § 1983. He says one faulty hiring decision, even though made by a municipal policymaker acting with deliberate indifference, cannot be a *Monell* "policy." 67 F.3d at 1185-86 (Garza, E., dissenting). This flies directly in the face of *Pembaur v. Cincinnati*, 475 U.S. 469, 480-81 (1986), where this Court held that a single decision by a policymaker on a matter over which he has policymaking authority constitutes municipal "policy." Judge Garza purports to distinguish between a policy which is itself unconstitutional and a policy which merely results in a state actor's violation of constitutional rights. 67 F.3d at 1186 (Garza, E., dissenting). Yet, this Court, in *City of Canton v. Harris*, 489 U.S. 378, 386-387 (1989), has clearly rejected the argument that the "policy" creating municipal responsibility must itself be unconstitutional. Rather, the "policy" can create

municipal liability, even though it does not expressly order or authorize constitutional deprivations, so long as the § 1983 plaintiff can establish action or inaction on the part of municipal policymakers that is so inadequate as to amount to deliberate indifference to the constitutional rights of citizens, and a close (or "proximate") causal connection between the municipality's deliberate indifference and the constitutional injury. *Id.* at 388-91. Thus, this Court in *Canton* has already considered and resolved the degree of fault required to establish municipal liability when the "policy" is not unconstitutional on its face but merely results in a constitutional deprivation. The injured party must prove that a municipality's policymaker was deliberately indifferent to citizens' constitutional rights, *id.* at 388, 390, and that the deliberately indifferent municipal actions (or inactions) actually caused the constitutional injury. *Id.* at 390-91. There is no requirement that a municipality must be deliberately indifferent to its citizens' constitutional rights at least *twice*, such as by hiring *two* police officers with lengthy criminal records showing a propensity for violence and a general disregard for the law, failing to adequately investigate the backgrounds of *both* despite the "red flag" of the rap sheets, setting *both* of those individuals on the public, and authorizing *both* of them to make forcible arrests prior to providing them any meaningful training.

Bryan County raised this "one tort is not enough" argument — in addition to other equally meritless and long-settled "issues" — in its Petition for Writ of Certiorari, docketed January 10, 1995.

REASONS FOR DENYING THE WRIT

SUMMARY OF ARGUMENT

Bryan County's Petition for Writ of Certiorari suffers three primary defects fatal to its request for certiorari. First, it raises "issues" that have long been resolved, either by Supreme Court precedent or by the express language of § 1983. Second, the only arguably "open" issue raised is one that is so fact-specific as to be jurisprudentially insignificant — whether in this one case the plaintiff produced sufficient evidence of deliberate indifference to support the jury's verdict. Third, Bryan County's Petition repeatedly mischaracterizes portions of the Fifth Circuit's opinion as setting down rigid rules of law that dramatically curtail municipal discretion in hiring police officers; in reality, the Fifth Circuit's opinion merely finds adequate factual support in the record for the jury's resolution of contested issues in favor of § 1983 plaintiff Jill Brown.

Bryan County's "federalism" issue is unworthy of review because § 1983 on its face resolves it. By imposing liability for federal constitutional deprivations caused by persons acting under color of state law, § 1983 expressly mandates the supremacy of the federal constitution over state law. *Every* vindication of constitutional rights pursuant to § 1983 necessarily imposes federal constitutional restraints on state governmental actors. Therefore, Petitioner's suggestion that a state governmental subdivision can insulate itself from § 1983 liability simply by complying with state law is patently foreclosed by the express language of § 1983. Petitioner's "issue" is not only unworthy of certiorari, it is remarkable in its misperception of § 1983.

Petitioner's sufficiency issue (regarding the sufficiency of evidence of Bryan County's deliberate indifference when it hired

Stacy Burns to be a law enforcement officer) is also particularly unworthy of this Court's attention. It is so fact-specific as to be jurisprudentially insignificant; the evidence of deliberate indifference produced at trial was so overwhelming that neither the jury's verdict nor the Fifth Circuit's affirmance can be regarded as ground-breaking; and the jury's verdict of municipal fault was supported also by an alternative finding that Petitioner does not even challenge — a deliberately indifferent failure to train.

The last issue raised by Petitioner is, essentially, whether two wrongs are necessary to constitute municipal fault under § 1983. Petitioner never really commits itself to which of the elements of § 1983 municipal liability requires two wrongs, probably because it cannot seriously be contended that the absence of multiple wrongs is legally fatal to any of those elements. Briefly, those elements are: (1) a municipal "policy," pursued with (2) "deliberate indifference" to the constitutional rights of citizens, which (3) directly causes a constitutional deprivation. *See Monell v. New York Dept. of Social Services*, 436 U.S. 658 (1978); *City of Canton v. Harris*, 489 U.S. 378 (1989). First, it is well-settled that a municipal "policy" can be a single decision by a municipal policymaker, so long as that decision is within his official policymaking authority. *Pembaur v. Cincinnati*, 475 U.S. 469, 480 (1986); *Monell*, 436 U.S. at 694. And Bryan County conceded at trial that Sheriff B.J. Moore was its exclusive official policymaker regarding matters of hiring and training police officers. R. Vol. 3, pp. 854, 862. Second, "deliberate indifference" is simply a culpable mental state (or *mens rea*) with which the municipality, or one of its official policymakers, must act, before liability for a nonpolicymaking employee's constitutional tort can be imputed to the municipality. There is nothing in this Court's § 1983 precedent suggesting that a municipality, or its designated policymaker, must be deliberately indifferent at least *twice* before it can be

found to have acted with the requisite culpable mental state. Third, the risk that Stacy Burns would employ excessive force against a citizen was precisely the risk that made the municipal policymaker's decision to hire him deliberately indifferent. It can hardly be contended, therefore, that Burns' subsequent deprivation of Jill Brown's constitutional rights was somehow so "unforeseeable" that there is not a direct (or proximate) causal connection between the municipal policymaker's deliberately indifferent decision to employ Burns and Burns' subsequent use of excessive force during the unlawful arrest of Jill Brown. And there is no statute, case, or policy that suggests that a municipality must be deliberately indifferent at least twice, or that a municipality's deliberate indifference must cause constitutional torts on at least two separate occasions, in order for the municipality to be regarded as having directly caused a constitutional deprivation. Indeed, such a restriction would constitute arbitrary torture of the doctrine of proximate cause.

In sum, this Court's § 1983 opinions clearly demonstrate that multiple torts are not required to establish any of the three basic elements of municipal liability for a constitutional tort perpetrated by one of its employees. Once a § 1983 plaintiff establishes (1) *municipal action* (*i.e.*, a municipal "policy"); (2) *municipal mental culpability*, or *mens rea* ("deliberate indifference"); and (3) *municipal causation* (a direct causal connection between the deliberately indifferent municipal policy and its employee's constitutional tort), that plaintiff has clearly established *municipal fault* under this Court's well-settled § 1983 precedent. An additional requirement of multiple torts, or multiple incidents of repeated torts, would not only be wholly arbitrary, such a requirement is plainly foreclosed by settled Supreme Court authority. Neither this "one tort is not enough" theory nor any other of Petitioner's "issues" are worthy of this Court's certiorari attention. Bryan County's Petition should, therefore, be denied.

ARGUMENT

I.

IT IS BEYOND DISPUTE THAT COMPLIANCE WITH STATE LAW DOES NOT INSULATE A PERSON (OR MUNICIPALITY) FROM § 1983 LIABILITY. MOREOVER, PETITIONER HAS MISREPRESENTED THE FIFTH CIRCUIT'S HOLDING IN ITS ATTEMPT TO MANUFACTURE A CERT-WORTHY FEDERALISM CONCERN.

A. The Express Language Of § 1983 Settles The "Issue" Of Whether State Governmental Subdivisions Can Avoid Liability Merely By Complying With State Law.

Bryan County's Petition — particularly its "federalism" argument — turns § 1983 on its head. Section 1983 expressly imposes liability for federal constitutional deprivations caused by persons acting under color of state law. And *Monell v. New York City Dept. of Social Services*, 436 U.S. 658 (1978), makes it clear not only that a municipality is a "person" for § 1983 purposes, but also that a municipal "policy" that causes a constitutional deprivation creates municipal liability (so long as the municipality has acted with "deliberate indifference" as later required by *City of Canton v. Harris*, 489 U.S. 378 (1989)). To suggest that a municipality (or any "person") is immune from § 1983 liability simply because its actions are authorized by state law, or not inconsistent with state law, is to nullify not only *Monell*, but § 1983 itself. Indeed, it is the *plaintiff's* burden under § 1983 to establish that a defendant's conduct was taken pursuant to, or under color of, state law. How shocked § 1983 plaintiffs would be to find that, by doing so, they were simultaneously helping their opponents establish a *defense*! It cannot reasonably be disputed that the ability of a § 1983 defendant to set up a defense merely by pleading, "But what I did was consistent with

state law," is plainly foreclosed by the express language of § 1983. Under Bryan County's twisted view of § 1983 and the constitution, a citizen's federal constitutional rights would be subservient to, rather than protected from, state law. A state could protect all of its governmental subdivisions from § 1983 liability simply by passing minimum standards at the state level that govern all of the typical activities that subdivisions perform. Under Bryan County's view, so long as the hiring of a police officer complies with state law minimum requirements — no felony record, a high school diploma — the County is effectively insulated from § 1983 liability. A municipality literally could ignore an applicant's assertions during an interview that, "I want to be a police officer because I like to throw my weight around," or "I love violence," or "I want to rough up some black people," so long as the candidate met the state's generic minimum requirements. Or, as occurred in this case, a municipal policymaker could deliberately close his eyes to abundant evidence of an officer-applicant's propensity to engage in violence and general disregard for the law, so long as the applicant met such generic state minimums. From the time of § 1983's enactment until today, it has been beyond dispute that *state* minimums do not necessarily meet *federal constitutional* minimums. Indeed, § 1983 is expressly designed to address just such disparities.

Recognizing that meeting state minimums does not insulate a municipality from § 1983 liability is not to say that meeting those minimums is wholly irrelevant to *Canton's* "deliberate indifference" requirement. Yet, nowhere does Petitioner contend that it was somehow prevented from putting on evidence of those state law minimums or arguing to the jury that following those minimums showed that there was no "deliberate indifference." The jury's finding of deliberate indifference, however, indicates that the jury — as was its prerogative — was more influenced by the specific evidence surrounding Officer

Burns' particular unfitness for the job of police officer, than by the County's evidence that hiring Burns was not expressly precluded by generic state law minimums. And the Fifth Circuit understandably ruled that the jury's finding was supported by the evidence. *Brown v. Bryan County*, 67 F.3d at 1183-85. In sum, the plain language of § 1983 resolves Petitioner's primary "issue"; this so-called "federalism issue" is, consequently, not an issue at all, much less a cert-worthy one.

B. Bryan County's Petition Repeatedly Mischaracterizes The Fifth Circuit's Holding In An Attempt To Manufacture A Cert-worthy Federalism Issue Out Of Whole Cloth.

Throughout its Petition, apparently in an effort to beef up its federalism argument, Bryan County blatantly misrepresents the Fifth Circuit's opinion. *See* Petition for Writ of Certiorari, at p. 3 (accusing the Fifth Circuit of "fashion(ing) minimum hiring qualifications"), at p. 4 ("the Fifth Circuit has essentially held that the State of Oklahoma does not have the right to employ deputies who have had prior misdemeanor arrests"), at p. 7 ("The Fifth Circuit has crafted a minimum hiring standard"), at p. 10 ("The Fifth Circuit held that Burns was *precluded* from serving as a reserve deputy because of his background of misdemeanor arrests") (emphasis in original), *etc.* An honest reading of the Fifth Circuit's opinion, however, clearly reveals that nowhere did the Fifth Circuit craft minimum federal hiring standards; nowhere did the Fifth Circuit hold that municipalities are precluded from hiring officers with a misdemeanor record; nowhere does the Fifth Circuit state that hiring an officer with a misdemeanor record is deliberate indifference *per se*. *See Brown v. Bryan County*, 67 F.3d 1174 (5th Cir. 1995). All the Fifth Circuit "held" was that the evidence presented in this particular case was sufficient for a jury to conclude that Sheriff Moore's decision to hire Burns amounted to deliberate indifference to the public's constitutional rights. 67 F.3d at 1183-1185. Obviously, that holding is fact-specific, appropriately deferential to the jury,

and in no way erects rigid federal qualifications for state officers that foreclose or "preclude"[3] the hiring of all officers who have once committed misdemeanors. Bryan County's suggestion to the contrary is nothing less than a deliberate misconstruction of the Fifth Circuit's opinion in a desperate attempt to create a certiorari-worthy issue.

II.

THIS COURT SHOULD NOT GRANT CERTIORARI TO REVIEW THE SUFFICIENCY OF EVIDENCE SUPPORTING A JURY'S FINDING THAT A MUNICIPALITY ACTED WITH DELIBERATE INDIFFERENCE IN HIRING A PARTICULARLY UNFIT INDIVIDUAL TO BE A LAW ENFORCEMENT OFFICER.

A. This Issue Is So Case-Specific That It Is Especially Inappropriate For Certiorari.

Petitioner has wholly failed to demonstrate the cert-worthiness of this fact-intensive issue. Indeed, Bryan County's Petition, at pages 15-17, sounds like a jury argument. Apparently, Bryan County is still in denial of the jury's verdict,

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3. Petitioner's strategy is evident in its repeated emphasis on *one word in one footnote* in the Fifth Circuit's opinion — the word "precluded." (*See* Petition, at 7, 10, 11, 13, 14, 15, 18). The plain suggestion of this repeated reference is that the Fifth Circuit somehow held, as a matter of *law*, that hiring a police officer with a misdemeanor record will automatically constitute deliberate indifference. An examination of the offending footnote, however, reveals the true (and *fact*-based) nature of the Fifth Circuit's decision — deference to the jury's finding of deliberate indifference in light of the particularly egregious evidence of Burns' propensity for violence and disregard for the law. 53 F.3d at 1184 n. 20. Indeed, the Fifth Circuit carefully summarized the evidence, concluding that the jury could reasonably have concluded that the County's policymaker, Sheriff Moore, deliberately closed his eyes to his relative's violent background. *Id.* at 1183-85.

given that its heading complains of "The Fifth Circuit's conclusion" rather than "the jury's conclusion." Or perhaps this is merely a continuation of its earlier strategy to dress up a *fact*-based non-issue in cert-worthy (and *law*-based) clothing. In any event, the Fifth Circuit did not conclude that Bryan County was deliberately indifferent, just that the *jury* reasonably could have so concluded. 67 F.3d at 1184. And the Fifth Circuit's affirmance of the jury's verdict is hardly surprising given the overwhelming evidence of deliberate indifference — some of which is referred to in our Statement of the Case, and some of which the Fifth Circuit referred to in upholding the jury's verdict. *Id.* at 1183-85. The Fifth Circuit's affirmance on this point is neither controversial, nor novel, nor far-reaching — and it is decidedly *not* worthy of this Court's attention.

B. Deciding This Insufficiency Issue Would Be Wholly Advisory, As The Jury Finding Of Municipal Fault Also Rested On Alternative Grounds.

Reading Bryan County's Petition, it is easy to forget that the faulty hiring claim was not the only basis of municipal liability; the jury also found that Sheriff Moore (Bryan County's policymaker on matters of both police hiring and training) was deliberately indifferent in failing to adequately *train* Burns prior to putting him on the streets and authorizing him to make forcible arrests. R. Vol. 10, pp. 823-25. Of course, the County's knowledge of Burns' lengthy rap sheet not only supports the jury's finding of liability based on faulty hiring, but also its finding of deliberate indifference in failing to train him.[4] Thus,

4. Bryan County's Petition attempts to slip the training deficiency under the rug, at page 16 of its Petition, when it implies that County awareness of Burns' criminal history was somehow offset by training and supervision. This is not only a mischaracterization of the factual record, but a denial of the jury's alternative finding of County deliberate indifference. Moreover, the Fifth Circuit left the inadequate *training* portion of the verdict both undisturbed and undiscussed, stating early in its discussion, "[f]or efficiency's sake, we will address only those points that we believe merit review." 67 F.3d at 1178.

even if the Court decided to review Petitioner's sufficiency point (regarding the *hiring*), it would be issuing a wholly advisory opinion due to the jury's finding of an alternative basis of municipal liability — a *training* policy of Bryan County, instituted by its policymaker, that was so inadequate as to amount to deliberate indifference to citizens' constitutional rights.

III.

THIS COURT'S § 1983 OPINIONS — AND THE EXPRESS LANGUAGE OF § 1983 — DEMONSTRATE THAT IT IS WELL-SETTLED THAT MUNICIPAL LIABILITY MAY TURN ON A SINGLE DELIBERATELY INDIFFERENT DECISION BY A MUNICIPAL POLICYMAKER THAT CAUSES A SINGLE DEPRIVATION OF CONSTITUTIONAL RIGHTS.

When a municipal employee, such as a police officer, deprives a citizen of her constitutional rights and incurs § 1983 liability, that liability is not automatically imputed to the municipality via a theory of *respondeat superior*. *See Monell*, 436 U.S. 658, 691 (1978). Instead, a § 1983 litigant must clearly demonstrate municipal fault — *i.e.*, municipal responsibility for the constitutional tort committed by its employee. According to this Court's rulings in *Monell*, *Pembaur*, and *Canton*, municipal fault requires (1) a municipal "policy," which includes a decision by a municipal policymaker regarding a matter within his policymaking authority; (2) the municipality's (or its policymaker's) deliberate indifference to citizens' constitutional rights; and (3) a direct causal connection between the municipality's deliberately indifferent "policy" and its employee's deprivation of the plaintiff's constitutional rights. *See Monell*, 436 U.S. at 694; *Pembaur v. Cincinnati*, 475 U.S. 469, 480 (1986); *City of Canton v. Harris*, 489 U.S. 378, 388-91

(1989). These three requirements are hardly mystical — they merely represent the three basic requirements of tort liability: (1) act, (2) mental state, and (3) causation of the injury. The point of this Court's decisions in *Monell* and *Canton* was to assure that those three fundamentals were attributable to the *municipality.* Thus, *Monell*'s "policy" effectively requires a *municipal act; Canton's* "deliberate indifference" standard is the requisite *municipal mental state*; and *Canton's* requirement of a close causal connection between the municipality's deliberately indifferent policy and its employee's subsequent constitutional tort assures *municipal causation.* When these three requirements of municipal fault are established — municipal act, municipal culpable mental state, and municipal causation of the constitutional injury — it is fair to attribute blame for a municipal employee's constitutional tort to the municipality itself. This Court's § 1983 precedent requires plaintiffs to jump no additional hurdles. Indeed, any additional hurdles would be wholly arbitrary.

Nevertheless, Bryan County apparently subscribes to the view that "one constitutional tort is not enough." This view is shared by the dissenting judge on the Fifth Circuit panel, Judge Emilio Garza. This view is "novel" only in the sense that it runs fundamentally counter to the express language of § 1983 and this Court's § 1983 cases. Indeed, the absolute emptiness of this view is revealed by the complete inability of Bryan County to settle on precisely what element of a § 1983 cause of action is missing when a plaintiff proves a municipal deprivation only of *her* constitutional rights and "neglects" to prove that other individuals not party to the litigation had previously suffered similar deprivations. Is it the "policy" that is missing? Is it the "deliberate indifference"? Is it the "direct causal link" between the policy and the constitutional deprivation?[5] The Petitioner's

5. Judge Emilio Garza apparently believes that multiple incidents of constitutional torts perpetrated by municipal employees is necessary to (Cont'd)

refusal to precisely identify the issue and stake out a position on that issue is revealing. Indeed, only by playing this § 1983 "shell game" (policy? deliberate indifference? causation?) is it possible to pretend that the plaintiff's proof in this case is legally insufficient to support municipal liability.

Though Bryan County's Petition is confusing and indecisive, it is possible to distill from its arguments two possible variations of its "one tort is not enough" theory. Petitioners suggest, first, that Bryan County's policymaker must be deliberately indifferent with respect to the hiring of more than one officer before municipal liability can attach; and, second, that the officer must engage in multiple and repeated incidents (of excessive force) depriving citizens of constitutional rights before § 1983 liability can attach to the County. Both positions are plainly foreclosed by settled Supreme Court authority. The

(Cont'd)
establish *causation*! *Brown v. Bryan County,* 67 F.3d 1174, 1186 (Garza, E., dissenting). Not only is it illogical to require a municipal defendant to cause two constitutional torts before it can be regarded as causing any, but evidence of causation could not be any stronger than in the present case. A municipality hires an individual, with a lengthy record showing a propensity for violence and a callous disregard for the law, gives that individual a badge, and authorizes him to make forcible arrests prior to any meaningful training and without adequate supervision. In the first two months of his law enforcement career, he subjects a citizen to an unlawful arrest and excessive force. As the Fifth Circuit ruled, there was sufficient evidence for the jury to have found that the municipal policymaker's deliberately indifferent actions directly caused the deprivation of Jill Brown's constitutional rights. 67 F.3d at 1185. Indeed, it would constitute sheer torture of the causation doctrine to regard Burns' unlawful arrest and excessive force as somehow so unforeseeable as to defeat proximate cause. Petitioner attempts to mimic Judge Garza's position, but only reveals its inability to distinguish two separate elements of municipal fault — causation and deliberate indifference. *See* Bryan County's Petition, at "Questions Presented," #2 (referring to "causative link" and "deliberate indifference" as if they are one and the same).

first position requires a definition of *Monell's* "policy" requirement that was expressly rejected in *Pembaur v. Cincinnati*, 475 U.S. 469 (1986); the second position rests not only on a blatant misreading of one out-of-context sentence from *Oklahoma City v. Tuttle*, 471 U.S. 808 (1985), but also constitutes a virtual denial of this Court's ruling in *City of Canton v. Harris*, 489 U.S. 378, 386-387 (1989). Neither position, therefore, raises a contention worthy of this Court's certiorari jurisdiction.

A. It Is Well-Settled That A Single Decision By A Municipal Policymaker, So Long As It Is Made With Deliberate Indifference To The Rights Of Citizens And Causes A Constitutional Deprivation, Is Sufficient To Impose § 1983 Liability.

Petitioner's suggestion that municipal liability for faulty hiring requires the improper hiring of more than one police officer rests on a construction of *Monell's* "policy" requirement that was expressly rejected by this Court in *Pembaur v. Cincinnati*, 475 U.S. 469, 480-481 (1986). The point of *Monell* was to permit municipalities to be sued, but only upon an adequate showing of municipal fault. 436 U.S. 658, 690-94 (1978). Such municipal fault occurs when "execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Monell*, 436 U.S. at 694. The Court in *Pembaur* expressly held that municipal liability under *Monell* may be imposed "for *a single decision* by municipal policymakers under appropriate circumstances." 475 U.S. at 480 (emphasis added).[6] Although "official policy" often refers to

6. Judge Emilio Garza, in his Fifth Circuit dissent, seizes on the words, "under appropriate circumstances" and interprets them in a way that is plainly foreclosed by the very same discussion in *Pembaur* in which those words

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formal rules that establish fixed plans of action to be followed under similar circumstances consistently and over time, the Court in *Pembaur* recognized that a government (or a government policymaker) frequently chooses a course of action tailored to a particular situation and not intended to control decisions in later situations. 475 U.S. at 481. According to the Court, "[i]f the decision to adopt that particular course of action is properly made by that government's authorized decisionmakers, it surely represents an act of official government 'policy' as that term is commonly understood." *Id.* Where such "decisions to adopt a particular course of action" are made by those who establish municipal policy, *Monell's* requirement of municipal fault is satisfied because "the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly." *Id.* To deny compensation to the victim of such municipal fault would, according to *Pembaur*, be contrary to the fundamental purpose of § 1983. *Id.*

Petitioner's confusion may be attributable to a failure to recognize the difference between a *Monell* "policy" and a *Monell* "custom." *Monell* ruled that municipal liability extends beyond those constitutional deprivations caused by a municipal "policy" to those deprivations caused by municipal "customs," even though such a "custom" has not received approval through the municipality's official decision-making channels. *Monell*, at 690-691. Such a "custom" involves "persistent and widespread" practices. *Id.* at 691. But *Monell*'s "custom" alternative for

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appear! As this Court expressly indicated in *Pembaur*, one of those "appropriate circumstances" includes a decision to adopt a particular course of action so long as that decision is made by that government's authorized decisionmakers. 475 U.S. at 481. Such a decision, according to the Court, "surely represents an act of official 'policy' as that term is commonly understood." *Id.*

establishing municipal responsibility for its employees' unconstitutional acts was clearly intended to supplement the "policy" alternative and not restrict it. *See Monell*, at 690-691. Thus, although a plaintiff pursuing municipal liability based on a municipal "custom" must show "persistent and widespread" practices resulting in deprivations of constitutional rights, this Court in *Pembaur* quite clearly ruled that a municipal "policy" is established by a single decision made by a municipal policymaker on a matter within his policymaking authority. 475 U.S. at 480-481. And the § 1983 plaintiff in the present case never argued that Bryan County had a "custom" of hiring persons whose criminal records demonstrated them wholly inadequate to be law enforcement officers. This is a "policy" case, not a "custom" case.[7]

Thus, this Court has already resolved, in *Pembaur*, that municipal liability may follow from a single decision by a policymaker to adopt a particular course of action that is to be taken only one time. 475 U.S. at 481. The plaintiff, of course, in order to comply with *City of Canton v. Harris*, will have to show that the policymaker's course of action was pursued with deliberate indifference to the rights of citizens and, further, that the policymaker's deliberately indifferent course of action caused the constitutional violation. 489 U.S. at 390-391. There is nothing in *Canton*, however, that even remotely suggests that the Court has cut back on *Pembaur*. Neither *Canton* nor any other Supreme Court case requires, as an *element* of proof of § 1983 municipal liability, that the plaintiff prove not only the improper hiring of the officer who violated her rights but, additionally, the improper hiring of some other officer who had nothing

7. And Bryan County plainly conceded in the trial court that Sheriff Moore was its official, exclusive, and final policymaker regarding the hiring and training of law enforcement officers. R. Vol. 3, pp. 854, 862. *See also, Brown v. Bryan County*, 67 F.3d at 1182 n. 17 (Bryan County failed to object to jury instructions which referred to Sheriff Moore as the final policymaker).

whatsoever to do with the particular constitutional deprivation complained of. There is nothing in the language of § 1983 suggesting that defendants must commit two wrongs in order to incur § 1983 liability; there is nothing in *Monell* or its progeny requiring plaintiffs to demonstrate two instances of municipal fault for a municipality to incur liability; and, indeed, there is no policy in the whole of state or federal tort law that suggests that a defendant must be twice faulty (or, here, twice "deliberately indifferent") before a plaintiff can recover for fault-caused injury.[8] The complete absence of either statutory or jurisprudential support for Petitioner's position surely demonstrates that it has not identified an issue worthy of certiorari.

B. It Is Well-Settled That A Single Constitutional Violation, So Long As Caused By The Deliberate Indifference Of A Municipal Policymaker, Is Sufficient To Impose Municipal Liability.

Petitioner's suggestion that the first victim of a constitutional tort cannot recover from a municipality under § 1983 is astounding, and flies directly in the face of § 1983's plain language. Section 1983 authorizes recovery, against those at fault, for a "deprivation" (*singular*). 42 U.S.C. § 1983. And a municipality is at fault for that deprivation so long as the plaintiff meets *Monell's* "policy" requirement, *Canton's* "deliberate indifference" standard, and *Canton's* "causation of constitutional violation" requirement. There is no additional requirement, and Petitioners have pointed to no authority that even arguably engrafts such an artificial barrier to municipal

8. Whether the municipality has adequate notice of a potential employee-perpetrated constitutional tort is certainly not a problem. Indeed, *Canton's* "deliberate indifference" standard is precisely the assurance that the municipality itself is on fair notice. To require a municipality to be deliberately indifferent *twice* before liability could attach would not only denigrate *Canton's* mission but deny its primary source of legitimacy.

liability on top of the already imposing barriers erected in *Monell* and *Canton* to protect municipalities from undeserved liability. This is simply not an open issue, much less a cert-worthy one.

The language in the controlling § 1983 municipal liability cases expressly envisions municipal liability — so long as municipal fault is established in accordance with *Monell* and *Canton* — for a single constitutional violation perpetrated by one of its employees. *See, e.g., Monell*, 436 U.S. at 694 (the government is responsible "when execution of a policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts *the injury*" and "this case unquestionably involves official policy as the moving force of *the constitutional violation.*") (emphasis added) and at 691 ("Congress did not intend municipalities to be held liable unless action pursuant to official municipal policy of some nature caused *a constitutional tort.*") (emphasis added); *Canton*, at 389 ("*the constitutional violation*" and "*a constitutional deprivation*"), and at 391 ("deficiency in a city's training program must be closely related to *the ultimate injury.*") (emphasis added); *Oklahoma City v. Tuttle*, 471 U.S. 808, 823 ("there must be an affirmative link between the policy and *the particular violation* alleged") and at 824 (*"the incident," "the constitutional deprivation"*) (emphasis added). All of these references in the singular to "incident," "tort," "violation," "deprivation" and "injury" are surely not an accident.

Not only does all the controlling precedent envision recovery for a single constitutional deprivation, but the plain language of § 1983 could not be any clearer on the point. Section 1983 authorizes recovery, against those at fault for a "deprivation." 42 U.S.C. § 1983. There is no general RICO-style "pattern of deprivations" requirement. Although a plaintiff will need to introduce proof of widespread practices or multiple incidents in a case where her theory of municipal culpability for

those incidents is premised on *Monell's* "custom" alternative, there is no general across-the-board § 1983 requirement of "multiple incidents" applicable to all municipal liability cases, including those premised on municipal "policy" as opposed to municipal "custom." And no Supreme Court case has ever so interpreted § 1983, nor provided even a hint of such a requirement so as to create an open, cert-worthy question. Indeed, placing such an artificial barrier in the path of § 1983 plaintiffs would clearly controvert a controlling principle of statutory construction — *i.e.*, that civil rights remedies, such as § 1983, be broadly and not narrowly construed. *See Monell*, 436 U.S. at 684.

Despite all the preceding (and overwhelming) evidence that § 1983 does not have a multiple unconstitutional incident requirement, Petitioners rely, at p. 6, on Judge Emilio Garza's dissent, which rests on a solitary phrase in *Tuttle* taken wholly out of context. In *Tuttle*, the trial judge's instructions to the jury permitted a finding of municipal liability without any substantial proof of municipal fault. *Tuttle*, 471 U.S. at 821, 824. Rather, the jury instructions in *Tuttle* required proof *only* of the constitutional deprivation (excessive force by a police officer) and permitted the jury to infer from that single incident of excessive force all the other elements of municipal liability — (1) the "policy," such as a decision by a policymaker in charge of police training, (2) the "deliberate indifference" by that policymaker in taking an inadequate course of action in training matters, and (3) the direct causal connection between the deliberately indifferent municipal policy and the municipal employee's constitutional tort. 471 U.S. at 821. If a plaintiff could recover from a municipality merely by introducing proof of an employee's constitutional violation, without more, and have a jury instructed that it could infer each of the remaining elements of municipal liability solely based on evidence of the municipal employee's constitutional tort, the efforts of the Court

in *Monell* (and later in *Canton)* — to set standards for municipal liability that ensure *municipal* fault and not just municipal *employee* fault — would have been in vain. Indeed, if municipal liability can be based only on proof of a single incident of excessive force perpetrated by a municipal employee, *without more — without* proof of any action taken by a municipal policymaker, *without* proof of that policymaker's deliberate indifference, and *without* proof that the policymaker's deliberate indifference caused the constitutional deprivation — municipal liability would virtually be based on *respondeat superior,* which the Court in *Monell* expressly rejected. Thus, the Court in *Tuttle* was simply ensuring the continued vitality of *Monell ;* the Court in no way ruled, or even implied, that § 1983 plaintiffs must, as a matter of law, prove *multiple* incidents involving constitutional violations in order to recover from a municipality. Indeed, the Court in *Tuttle* expressly approved of municipal liability based on a single incident of unconstitutional activity, *if* proof of the single incident is accompanied by proof of the requisite fault on the part of the municipality, and proof *of* the causal connection between the municipal fault and the constitutional deprivation. *Tuttle,* at 824. *Tuttle* in no way adds an additional *element* to a § 1983 plaintiff's burden of establishing municipal liability — *i.e.,* something that must be proved in every case *pro forma,* regardless of how strong a showing the plaintiff otherwise makes of municipal fault for the constitutional deprivation.[9] In sum, the

9. Contrary to Petitioner's attempt, at p. 15 of its Petition, to manufacture a split in the circuits, a quick glance at each of the cases it cites reveals that none of them stand for the remarkable proposition that multiple incidents of employee-perpetrated constitutional torts are required as a matter of law to establish municipal liability even in cases where the § 1983 plaintiff has otherwise clearly established "policy", "deliberate indifference" and "causation". Indeed, the Eleventh Circuit has expressly rejected Petitioner's "multiple incident" theory in *Parker v. Williams,* 862 F.2d 1471, 1480 (11th Cir. 1989) (concluding that the "mere fact alone that this may have been a single incident does not insulate the county from liability"); and the Seventh (Cont'd)

"single incident" phrase in *Tuttle* simply does not bear the load

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Circuit has implicitly rejected an absolute multiple incident requirement by recognizing that one of the ways a municipal policy can violate an individual's civil rights is when "*the constitutional injury* was caused by a person with final policymaking authority". *McTigue v. City of Chicago,* 630 F.3d 381,382 (7th Cir. 1995) (emphasis added to show the singular use of "injury"). Additionally, each of the cases cited by Petitioner involves gross deficiencies in the proof of at least one of the three fundamental elements of § 1983 municipal liability. In *Hill v. Dekalb Regional Youth Detention Center,* 40 F.3d 1176, 1195-97 (11th Cir. 1994), there was a complete failure of proof of all three elements of municipal liability. The governmental subdivision that was sued — Dekalb County — had transferred control of the detention center to the state prior to the constitutional tort at issue. 40 F.3d at 1195-96. Therefore, there was a complete failure of proof of a Dekalb County "policy" that resulted in the constitutional deprivation. *Id.* at 1196. Because of Dekalb County's complete lack of control of the facility at the time of the tort, there was not only an absence of Dekalb County "policy", there was an attendant lack of a causal connection between any action of Dekalb County and the constitutional injury. Moreover, because the case involved a sexual assault committed by a staff member with *no criminal record,* and because plaintiff did not specifically state how the screening process for hiring staffmembers was flawed, there was simply a failure of proof that any policymakers — Dekalb County's or the state's — had been deliberately indifferent to the potential for sexual violence. *Id.* at 1194. Therefore, given the absence of "policy", the absence of "deliberate indifference", and the absence of "causation", it is hardly surprising that the Court stated that the single incident (sexual assault) could not by itself establish municipal fault. Similarly, in *Hirsch v. Burke,* 40 F.3d 900, 904-905 (7th Cir. 1994), there was a clear failure of proof of deliberate indifference, primarily because of a complete lack of any municipal notice of a potential problem involving police officers' inability to distinguish intoxication from diabetic shock. Indeed, the failure to train allegation in *Hirsch* was so fact-specific (failure to train officers to recognize the difference between intoxication and insulin shock), that it would be practically impossible to prove deliberate indifference in regard to that specific need without some prior similar incident to put policymakers on notice of the potential problem. *See id.,* at 905 (ruling only that notice of a pattern of constitutional violations was required to prove deliberate indifference "in the present context.") Put another way, given the particular circumstances (Cont'd)

that Petitioner attempts to place on it. All it means is that a single incident of excessive force proves only one element of municipal liability — a constitutional deprivation perpetrated by a municipal employee — and does not by itself constitute adequate proof of all the rest of the elements required by this Court to

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involved in *Hirsch*, multiple incidents of the particular constitutional deprivation may have been *factually* necessary to prove deliberate indifference; but *Hirsch* cannot and should not be read as requiring a § 1983 plaintiff to prove multiple unconstitutional incidents as a *legal* prerequisite to municipal liability in cases where the plaintiff can readily establish deliberate indifference without pointing to multiple incidents. And in the present case, in stark contrast to *Hirsch*, the risk that the particular employee (Burns) would perpetrate the particular constitutional tort complained of (excessive force) was not so inherently unpredictable that multiple incidents of excessive force were necessary in order to put Bryan County on notice of Burns' proclivity for violence, and thereby demonstrate its deliberate indifference. Indeed, the whole point of *Canton's* deliberate indifference requirement is that it assures "notice" and therefore a fair opportunity for the municipality to avoid liability. The governmental subdivision in *Hirsch*, quite clearly, lacked that opportunity, and therefore could not be regarded as deliberately indifferent. In the present case, however, Bryan County's policymaker quite clearly had a fair opportunity to avoid liability, as there was abundant evidence putting that policymaker on notice of Burns' potential for using excessive force. But, unfortunately, the County's policymaker consciously ignored the "red flags" regarding Burns and clearly demonstrated deliberate indifference. *Brown v. Bryan County*, 67 F.3d 1174, 1183-85 (5th Cir. 1995). In sum, none of the cases cited by Petitioner support Petitioner's contention that proof of multiple constitutional torts by municipal employees is an absolute legal prerequisite to municipal liability in every case. — *i.e.*, that multiple and repeated torts is an additional element of municipal liability that can deprive plaintiffs of recovery even when they, like Jill Brown, have clearly demonstrated *municipal action* ("policy"), *municipal mens rea* ("deliberate indifference") and *municipal causation* (direct causal connection between the municipality's deliberately indifferent policy and its employee's constitutional tort). Because none of the cases cited by Petitioner clearly support the arbitrary doctrine that Petitioner is propounding, there is simply not a circuit split created by the Fifth Circuit's rejection of Petitioner's position.

impute that employee tort to the municipality itself. Only by proving the rest of those elements — "policy," "deliberate indifference," and "causation" — can the constitutional tort be fairly imputed to the municipality. And when a plaintiff, as Jill Brown did, proves each of those elements of municipal fault, *in addition to* the municipal employee's constitutional tort, then municipal liability is certainly not based on *respondeat superior* as the Petitioner argues; rather, this is precisely the showing of municipal fault required by *Monell* and *Canton*. Quite clearly, Jill Brown, unlike the plaintiff in *Tuttle*, adequately proved each of the required elements of § 1983 municipal liability by introducing evidence of municipal fault far more extensive than just a municipal employee's use of excessive force.[10]

In sum, neither § 1983 nor any Supreme Court case discussing § 1983 municipal liability requires a plaintiff to demonstrate either (1) that the municipality be at fault for the improper hiring of more than one police officer, or (2) that the municipal fault must lead to more than one incident involving the deprivation of constitutional rights. Petitioner's position would mean that a plaintiff could not recover from a municipality even though she has demonstrated *municipal action* (hiring and training decisions by a municipal policymaker regarding a

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10. A thorough review of the trial record, or of the Fifth Circuit's careful analysis thereof, reveals that, unlike *Tuttle*, the plaintiff submitted abundant proof of a municipal "policy" — *i.e.*, a grossly inadequate hiring decision made by the official municipal policymaker in charge of hiring police officers. *Brown v. Bryan County*, 67 F.3d 1174, 1182-85 (5th Cir. 1995). Unlike *Tuttle*, the plaintiff submitted abundant proof of the policymaker's culpable mental state (*Canton's* "deliberate indifference"). *Id.* at 1183-85. Unlike *Tuttle*, the plaintiff submitted abundant proof that the policymaker's deliberate indifference directly caused the constitutional deprivation. *Id.* And, unlike *Tuttle*, the judge's instructions to the jury in no way permitted the jury to infer the existence of all those elements of municipal liability solely from the incident involving Burns' excessive force against Jill Brown. R. Vol. 10, pp. 799-801.

matter over which he has official policymaking authority), *municipal mens rea* (a hiring and training policymaker's deliberate indifference in choosing an inadequate hiring or training course of action), *municipal causation* (a close causal relationship between the municipal policymaker's deliberately indifferent failure to properly hire or adequately train and the officer's subsequent deprivation of a citizen's constitutional rights) and *injury* (the constitutional deprivation itself, such as a police officer's unconstitutional use of "excessive force"). Under Petitioner's view, municipalities could, through the actions of a designated policymaker, knowingly put a "time bomb" on the streets with a badge, and a citizen injured when that "time bomb" goes off could not recover from the municipality, so long as the municipal policymaker put only one "time bomb" on the street, *or* so long as the "time bomb" has exploded only once.[11] Placing such artificial restrictions on a plaintiff's ability to recover for tort — when she has shown a *municipal act* (*i.e.*, "policy"), *municipal mental culpability*, and *municipal causation of the constitutional injury* — would certainly constitute perplexing policy, and is distinctly not required by the law of § 1983. As previously demonstrated in this brief, the Fifth Circuit properly ruled that Jill Brown produced sufficient evidence in support of all the legal hurdles placed in her path — *municipal action* (actions, decisions, inactions of a "policymaker" with final policymaking authority regarding hiring and training), *municipal mental culpability* (deliberate indifference of the policymaker in choosing an inadequate course of action respecting the hiring and training of Officer Burns), and *municipal causation of plaintiff's constitutional injury* (a close, or "proximate," causal connection between the

11. Or, a school district could knowingly employ a janitor with a record of child sexual assaults, and a child later victimized could not recover from the school district, so long as the district hired only one such janitor *or* so long as the child was the janitor's first victim subsequent to the school district's decision to hire him.

municipal fault in improperly hiring Burns and inadequately training Burns, and Burns' subsequent and highly foreseeable deprivation of Jill Brown's constitutional rights by subjecting her to excessive force, false arrest, and false imprisonment). Nothing further is required. Indeed, any further requirement would not only be wholly arbitrary, but is plainly foreclosed by settled Supreme Court authority. There is simply not a cert-worthy issue to be found in Petitioner's "one tort is not enough" claims.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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